

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRINITY GLASS INTERNATIONAL, INC., a )  
Washington corporation, )

Plaintiff, )

v. )

BURNS, MORRIS & STEWART LIMITED )  
PARTNERSHIP, a Texas limited partnership, )

Defendant. )

No. C04-5330 RJB

STIPULATED ORDER  
DISMISSING CERTAIN CLAIMS

**STIPULATION**

The parties, through their undersigned counsel of record, state and stipulate as follows:

Defendant, Burns Morris & Stewart Limited Partnership ("BMS") stipulates, covenants, undertakes and agrees that it will not assert infringement of any claim of U.S. Patent No. 5,950,391 (the '391 Patent), or of claims 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, or 20 of U.S. Patent No. 5,873,209 (the '209 Patent) against Plaintiff, Trinity Glass International, Inc. ("Trinity Glass"), with respect to Trinity Glass's manufacture, sale, offering for sale, importation, and/or use of Trinity Glass's current, existing pre-hung doors containing the jamb-to-sill adapter known as the sill key. BMS further stipulates, covenants, undertakes and agrees that it will not assert infringement of

STIPULATED ORDER  
(C04-5330 RJB) — 1

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1 any claim of the '391 Patent or of claims 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,  
2 18, 19, and 20 of the '209 Patent against any purchasers of Trinity Glass's products for  
3 past or future purchases of, or for use, resale, or offering for resale of, Trinity Glass's pre-  
4 hung doors containing the jamb-to-sill adapter known as the sill key.

5 The preceding paragraph is a covenant not to sue for infringement of any claim of  
6 the '391 Patent and of claims 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and  
7 20 of the '209 Patent, and such covenant shall be construed broadly enough to extend to  
8 trivial variations of Trinity Glass's current, existing pre-hung doors containing the jamb-  
9 to-sill adapter known as the sill key, but shall not extend to any completely new and  
10 different products that Trinity Glass may introduce in the future.

11 Trinity Glass's suit for a declaratory judgment of invalidity and/or non-  
12 infringement of the '391 Patent and/or the '209 Patent, insofar as it pertains to patent  
13 claims other than claim 2 of the '209 Patent, shall be and hereby is dismissed for lack of  
14 subject matter jurisdiction, in light of the absence of a case or controversy as to patent  
15 claims other than claim 2 of the '209 Patent, with each party to bear its own costs. Trinity  
16 Glass's suit for a declaratory judgment of invalidity and/or non-infringement of claim 2 of  
17 the '209 Patent shall continue to proceed in this litigation. BMS's counterclaim against  
18 Trinity Glass for infringement of the '391 Patent and for infringement of claims 1, 3, 4, 5,  
19 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of the '209 Patent is dismissed with  
20 prejudice, with each party to bear its own costs. BMS's counterclaim against Trinity Glass  
21 for infringement of claim 2 of the '209 Patent shall continue to proceed in this litigation.  
22  
23

1 In light of the foregoing stipulation and grant of a covenant not to sue for patent  
2 infringement, this case will continue with respect to allegations of infringement, invalidity  
3 and enforceability as to claim 2 of the '209 Patent only.

4 DATED this \_\_\_\_\_ day of September, 2005.

5 Davis Wright Tremaine LLP  
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International, Inc.

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Attorneys for Defendant Burns, Morris &  
Stewart Limited Partnership

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ORDER

IT IS SO ORDERED.

DATED this 29<sup>th</sup> day of September, 2005.



ROBERT J. BRYAN  
United States District Court Judge

Presented by:

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Attorneys for Plaintiff Trinity Glass International, Inc.

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